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*Bangor etc. Ry. Co.*, 93 Me. 52, 44 Atl. 138, 47 L. R. A. 82. But see *contra Connelly v. Erie Ry. Co.*, 68 App. Div. 542, 74 N. Y. Supp. 277. And some authorities hold that the plaintiff is guilty of contributory negligence when he leaves his own land covered with combustible material. *Ohio etc. Ry. Co. v. Shanefelt*, 47 Ill. 497, 95 Am. Dec. 504; *Kesee v. Chicago etc. Ry. Co.*, 30 Iowa 78, 6 Am. Rep. 643. But the better view is that the plaintiff is under no obligation to clear his own land. *Richmond etc. Ry. Co. v. Medley*, 75 Va. 499, 40 Am. Rep. 734; *Kellogg v. Chicago etc. Ry. Co.*, 26 Wis. 223, 7 Am. Rep. 69.

WILLS—MUTUAL WILLS—REVOCATION.—The defendant and his wife executed mutual wills devising their property to each other during the natural lives of each, with remainder over to their son, if alive, if not to their daughter. On the death of his wife, the defendant encumbered the property covered by the will in favor of his housekeeper. *Held*, the defendant cannot so encumber the property. *Phillip v. Phillip*, 160 N. Y. Supp. 624.

A will executed by two persons jointly which gives the separate estate of the one who shall die first to the survivor is valid, operating as the separate will of each. *Rastetter v. Hoenninger*, 214 N. Y. 66, 108 N. E. 210; *Matter of Diez*, 50 N. Y. 88; *Lewis v. Scofield*, 26 Conn. 452, 68 Am. Dec. 404. In the case of joint wills, not made in pursuance of any contract, the power of the survivor to make a new will is admitted. *In re Cawley's Estate*, 136 Pa. St. 628, 20 Atl. 567; *Sappingfield v. King*, 49 Or. 102, 89 Pac. 142, 8 L. R. A. (N. S.) 1066; *Edson v. Parsons*, 155 N. Y. 555, 50 N. E. 265. A will made subsequent to an agreement between parties, in violation of the same agreement, will be admitted to probate and may revoke a former will made to carry out the provisions of that agreement, the parties being relegated to a court of equity to assert any rights they may have had by reason of the breach of contract. *Sumner v. Crane*, 155 Mass. 483, 29 N. E. 1151, 15 L. R. A. 447. A revocation of the will of a husband in favor of his wife will be implied from an alteration of the circumstances of the parties, as where subsequent to making mutual wills the husband and wife were divorced and the property divided between them. *Lansing v. Haynes*, 95 Mich. 16, 54 N. W. 699, 35 Am. St. Rep. 545. Likewise, one of two mutual wills made by two sisters, each devising all of her property to the other, is revoked upon the marriage of one, though she die without issue and in the belief that her will was unrevoked. See *Hale v. Hale*, 90 Va. 728, 19 S. E. 739.

A mutual will cannot be probated as the will of the survivor, where it has ceased to be the will of the other testator, having been revoked by the latter's marriage as well as by a later individual will, the will being intended to operate as the will of both or not at all. *Peoria Humane Society v. McMurtric*, 229 Ill. 519, 82 N. E. 319. But where two unmarried sisters made separate wills, each in favor of the other, it was held that the marriage of one of them did not revoke the will of the other. *Hinckley v. Simmons*, 4 Ves. Jr. 160. Also, where two persons were authorized to dispose of a certain estate by their joint will,

in the exercise of a power of appointment, and made and executed a joint will, it was held to be beyond the power of either, by separate act, to revoke the will so made. *Breathitt v. Whittaker's Ex'rs*, 8 B. Mon. (Ky.) 534.

Where two parties enter into an agreement to execute mutual wills, equity will enforce performance of the agreement. *Turnipseed v. Sirrine*, 57 S. C. 559, 35 S. E. 757, 76 Am. St. Rep. 580; *Rastetter v. Hoenninger*, *supra*. See *Johnson v. Hubbel*, 10 N. J. Eq. 332; *Logan v. McGinnis*, 12 Pa. St. 27; *Robinson v. Mandell*, Fed. Cas. 11,959. While an agreement to make reciprocal wills will be enforced in equity, the proof must be clearly and definitely established. *Herrick v. Snyder*, 27 Misc. 462, 59 N. Y. Supp. 229; *Edson v. Parsons*, *supra*. See *Dicken v. McKinley*, 163 Ill. 318, 54 Am. St. Rep. 471; *Kerr v. Kennedy* (S. C.), 90 S. E. 177. Where, pursuant to an agreement as to the distribution of their property, two persons make a joint and mutual will, one of them who accepts the provisions of the will in his favor cannot thereafter revoke the will. *Bower v. Daniel*, 198 Mo. 289, 95 S. W. 347. *Robertson v. Robertson*, 94 Miss. 645, 47 South. 675; *Carmichael v. Carmichael*, 72 Mich. 76, 40 N. W. 173, 1 L. R. A. 596, 16 Am. St. Rep. 528. Also, a will executed jointly by two parties whereby each devises his or her property to the other for life with a remainder over cannot be revoked by one after the death of the other so as to interfere with or affect the rights of the remaindermen. *Frazier v. Patterson*, 243 Ill. 80, 90 N. E. 216, 27 L. R. A. (N. S.) 508. See *McGuire v. McGuire*, 11 Bush. (Ky.) 142.